

REMARKS

Claims 1-4 and 6-15 are pending. Claims 1 and 9 have been amended. The claims remain 1-4 and 6-15.

Claims 1-4 and 6-8 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat No. 6,086,593 to Bonutti in view of U.S. Pat No. 6,200,347 to Anderson et al. Applicant respectfully traverses this prior art rejection.

The present invention as recited in amended claim 1 is a method of correcting a deformity by performing an osteotomy in a bone at an osteotomy site using a bone plate. The method steps include resecting the bone from a first side of the bone to a second side of the bone so as to leave a bony hinge on the second side, and opening the resection to a height at which the deformity is corrected using an opening tool. The bone plate is placed in a location such that the bone plate spans the open resection. The opening tool is removed, and the open resection is packed with at least two individual wedge shaped sections of material.

Bonutti discloses a method of realigning bone in which a wedge member is used to open a resected tibia, for example. *The wedge member remains in place in the tibia* to provide weight-bearing support. Mounting strips hold the wedge member in place. Significantly, the wedge member has a configuration that corresponds to the configuration of the outer side surface of bone at the location where the wedge member is to be installed in the tibia. Accordingly, the hard cortical outer layer of the bone has continuous engagement with the wedge member. Bonutti does not teach or suggest a method of resecting bone from a first side of the bone to a second side of the bone so as to leave a bony hinge on the second side, opening the resection with an opening tool, placing a bone plate in a location such that the bone plate spans the open resection, *removing the opening tool*, and packing the open resection with at least two individual wedge shaped sections of material. On the contrary, Bonutti discloses a method in which the wedge member opens the resection and *remains in place in the tibia*. Further, the wedge member has an outer configuration that occludes the opening, which would prevent any added step of packing

the open resection with at least two individual wedge shaped sections of material, as recited in amended claim 1 of the present application.

Anderson et al. does not cure the deficiencies of Bonutti. Anderson discloses composite bone grafts. Anderson does not teach or suggest a method that includes resecting bone from a first side of the bone to a second side of the bone so as to leave a bony hinge on the second side, opening the resection to a height at which the deformity is corrected using an opening tool, placing a bone plate so as to span the open resection, removing the opening tool, and packing the open resection with at least two individual wedge shaped sections of material. Further, Anderson et al. does not provide the motivation necessary to modify Bonutti to operate in a different way, as would be required to arrive at the present invention. Claim 1, and its dependent claims 2-4 and 6-8, are submitted as being patentable over the cited references.

Claims 9, 13, and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,203,546 to MacMahon in view of U.S. Pat. No. 5,749,875 to Puddu. Applicant respectfully traverses this rejection.

Claim 9 recites correcting a deformity by forming an osteotomy in a bone at an osteotomy site using a bone plate. The method includes resecting the bone from a first side of the bone to a second side of the bone to leave a bony hinge on the second side, inserting an opening tool into the resection, opening the resection using the opening tool to a height at which the deformity is corrected, placing the bone plate in a location such that the bone plate spans the open resection, removing the opening tool, and packing the resection with at least two individual pre-formed wedge shaped sections of material.

MacMahon discloses a method of installing an arcuate block implant into an osteotomy opened with valgus pressure and propped open with a temporary chock. MacMahon does not teach or suggest inserting an opening tool into the osteotomy resection, opening the resection using the opening tool to a height at which the deformity is corrected, placing a bone plate in a location such that the bone plate spans the open

resection, removing the opening tool, and packing the resection with at least two separate individual pre-formed wedge shaped sections of material.

Puddu does not cure the deficiencies of MacMahon. Puddu discloses opening an osteotomy resection using a wedge and filling the resection with autologous bone. Puddu does not provide the missing teaching of packing the resection with at least two individual pre-formed wedge shaped sections of material. Claim 9, and its dependent claims 10-15, are submitted as being patentable over the cited references to MacMahon and Puddu.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over MacMahon in view of Puddu, further in view of U.S. Pat. No. 4,563,489 to Urist. Applicant respectfully traverses this rejection.

Claim 15 depends from claim 14, which is dependent on claim 9, and further recites that synthetic bone that includes a biodegradable polylactide combined with a hydroxyapatite or tricalcium phosphate. Urist has been cited as disclosing biodegradable polylactic acid polymer for use in making implants. Urist does not cure the deficiencies of MacMahon and Puddu noted above. Claim 15 is submitted as being patentable over the cited references to MacMahon, Puddu, and Urist.

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In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

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